

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SERGEI SPITSYN,

Plaintiff,

v.

RICHARD MORGAN, *et al*,

Defendants.

Case No. C04-5134FDB

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
IN FORMA PAUPERIS

Noted for June 9, 2006

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. This matter is before the Court on plaintiff's filing of an application to proceed *in forma pauperis*. (Dkt. #81). However, because plaintiff already has paid the filing fee in this case, the Court should deny the application.

DISCUSSION

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. See 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Plaintiff paid the court filing fee and filed his original complaint on March 11, 2004. (Dkt. 1). On September 9, 2004, the Court granted defendants' motion for judgment on the pleadings. (Dkt. #21, #24, #34 and #35). Plaintiff appealed to the Ninth Circuit Court of Appeals, which, on January 18, 2006,

1 vacated the Court's decision and remanded the matter for plaintiff to file an amended complaint. (Dkt.
2 #49); Sptitsyn v. Morgan, 160 Fed. Appx. 593, 595 (9th Cir. 2005) (emphasis added). As such, this case is
3 not a new matter, but rather the continuation of the action initiated by plaintiff back in March 2004. Thus,
4 because plaintiff already has paid the filing fee in this matter, his application to proceed *in forma pauperis*
5 is moot and should be denied.

6 CONCLUSION

7 Because plaintiff has paid the Court filing fee, the undersigned recommends that the Court deny his
8 application to proceed *in forma pauperis*.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure ("Fed. R.
10 Civ. P."), petitioner shall have ten (10) days from service of this Report and Recommendation to file
11 written objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of
12 those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time
13 limit imposed by Rule 72(b), the clerk is directed set this matter for consideration on **June 9, 2006**, as
14 noted in the caption.

15 DATED this 18th day of May, 2006.

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19 Karen L. Strombom
20 United States Magistrate Judge
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